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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/032,751
Filing Date: October 27, 2001
Appellant(s): VAIDYANATHAN ET AL.

Anthony J. Josephson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 13 February 2008 appealing from the Office action mailed 25 August 2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application Serial No. 09/963812,

Application Serial No. 10/991718,

Application Serial No. 10/082884,

Application Serial No. 10/159224.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,587,837 B1	SPAGNA ET AL.	07-2003
2002/0146122 A1	VESTERGAARD ET AL.	10-2002
20070005432 A1	LIKOUREZOS ET AL.	01-2007

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims **1, 3-7, 10-12, 14-18** and **21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna et al., U.S. Patent No. 6,587,837 B1 in view of Vestergaard et al., Pub. No. US2002/0146122 A1 and Likourezos et al., Pub. No. 2007/0005432 A1, hereinafter referred to as Spagna, Vestergaard and Likourezos, respectively.

As per **Claims 1 and 12**, Spagna discloses a method and system for delivering electronic content from an online store comprising:

- allowing a content owner to post a file on the marketplace for access by users by,
 - providing information about the file
(C. 53, line 41- C. 55, line 62, C. 58, lines 2-9, also see Figure 6);
 - setting a retail price that users will be charged for downloading the file
(C. 12, lines 52-56, C. 62, lines 48-49, C. 79, lines 60-64); and

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- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website
(C. 13, lines 13-37, C. 71, lines 22-44, C. 73, lines 46-60, C. 76, lines 34-38);
- allowing a second user to search for files posted on the digital marketplace for one to download (C. 75, lines 34-37);
- if the second user selects a particular file to download, charging the user the retail price set for the file (C. 62, lines 58-59).

Spagna fails to disclose *setting a reseller commission; if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission*. Spagna however does disclose content providers may exploit their rights directly or license content to the electronic digital content store or intermediate market partners usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33). Moreover, Vestergaard teaches allowing a content owner to stipulate the amount of compensation a distributor (i.e. reseller) will receive for selling the content owner's products. The compensation can be a percentage of the gross receipts or based on a flat rate (0152). Furthermore, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a content owner to specify the

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amount of compensation that the distributor will receive if they sell their content and when the content is sold pay the content owner an amount equal to the charged amount minus the distributor's compensation and any ancillary fees as taught by Vestergaard and Likourezos, because it allows the content owner to determine the amount of revenue they are willing to receive for assistance in selling their product while also compensating the distributor for their assistance, as would be apparent in any typical business environment.

As per **Claims 3 and 14**, Spagna fails to disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include subtracting any transaction fees owed by the seller to any third party before sending the final payment to the content owner as taught by Likourezos, because it allows the seller to efficiently and quickly receive compensation for their assistance in selling the content owner's item while decreasing the amount of transactions between all parties of interest.

As per **Claims 4 and 15**, Spagna fails to disclose allowing the content owner to set the retail price and the reseller commission both positively and negatively. However, Vestergaard

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discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing the content owner to modify the percentage of the gross revenue the distributor receives as taught by Vestergaard, because it provides the content owner the flexibility in adjusting the amount of revenue the content owner decides to retain for themselves.

As per **Claims 5 and 16**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a publisher-sponsored download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claims 6 and 17**, Spagna discloses the requesting the first user to enter display options for the search (C. 76, lines 34-38).

As per **Claims 7 and 18**, Spagna discloses searching for files (C. 76, lines 34-38).

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Spagna fails to disclose where the display options are free files, pay-per download files, or files listed as resalable. However, Spagna discloses a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Moreover, Vestergaard discloses a several different pricing options, one being a free file pricing model (0058). Vestergaard also discloses displaying to the user whether the digital file is free or not (0108). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of pricing options as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claims 10-11 and 21-22**, Spagna discloses implementing the marketplace as a website on a network (C. 13, lines 21-22). Spagna fails to disclose implementing the digital marketplace as a peer-to-peer network. However, Vestergaard teaches implementing the marketplace as a website o a peer-to-peer network (0042-0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and disclose implementing the marketplace as a website or a p2p network as taught by Vestergaard, because it allows the marketplace use the resources of the peers to distribute the content being sold.

3. Claims **2, 13, 23-27, 30-32** and **33-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard, Likourezos and Eglen et al., Pub. No. US2003/0023505 A1.

As per **Claims 23-24 and 33-34**, Spagna discloses a method and system for delivering electronic content from an online store comprising:

- allowing a content owner to post a file on the marketplace for access by users by,
 - providing information about the file
(C. 53, line 41- C. 55, line 62, C. 58, lines 2-9, also see Figure 6);
 - setting a retail price that users will be charged for downloading the file
(C. 12, lines 52-56, C. 62, lines 48-49, C. 79, lines 60-64); and
- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website
(C. 13, lines 13-37, C. 71, lines 22-44, C. 73, lines 46-60, C. 76, lines 34-38);
- allowing a second user to search for files posted on the digital marketplace for one to download (C. 75, lines 34-37);
- if the second user selects a particular file to download, charging the user the retail price set for the file (C. 62, lines 58-59).

Spagna fails to disclose *setting a reseller commission; if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission*. Spagna however does disclose content providers may exploit their rights directly or license content to the electronic digital content store or intermediate market partners usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33). Moreover, Vestergaard teaches allowing a content owner to stipulate the amount of

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compensation a distributor (i.e. reseller) will receive for selling the content owner's products.

The compensation can be a percentage of the gross receipts or based on a flat rate (0152).

Furthermore, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee.

The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it

would have been obvious to one of ordinary skill in the art at the time of applicant's invention to

modify the method and system of Spagna and include allowing a content owner to specify the

amount of compensation that the distributor will receive if they sell their content and when the

content is sold pay the content owner an amount equal to the charged amount minus the

distributor's compensation and any ancillary fees as taught by Vestergaard and Likourezos,

because it allows the content owner to determine the amount of revenue they are willing to

receive for assistance in selling their product while also compensating the distributor for their

assistance, as would be apparent in any typical business environment.

Spagna fails to disclose that the content owner edits the file information and to change

the retail price and the reseller commission in real-time. However, Eglen teaches a dynamic

pricing technique which changes the price of a product depending on its demand (0007-0009,

0064, 0083). Vestergaard also discloses compensating the distributor a percentage of the gross

revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would

have been obvious to one of ordinary skill in the art at the time of applicant's invention to

modify the method and system of Spagna and include changing the price of a product

dynamically based on the demand for the product as taught by Eglen et al, where the change in

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price also changes the distributor compensation. Eglen provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claims 2 and 13**, Spagna fails to disclose allowing the content owner to monitor download statistics for the file the content owner posted and to change the retail price and the reseller commission for the file in real-time. However, Eglen teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include changing the price of a product dynamically based on the demand for the product as taught by Eglen et al, where the change in price also changes the distributor compensation. Eglen provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claims 25, 30 and 35**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a donation and an infomercial download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well

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known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claims 26 and 36**, Spagna discloses the requesting the first user to enter display options for the search (C. 76, lines 34-38).

As per **Claims 27 and 37**, Spagna discloses searching for files (C. 76, lines 34-38). Spagna fails to disclose where the display options are free files, pay-per download files, or files listed as resalable. However, Spagna discloses a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Moreover, Vestergaard discloses a several different pricing options, one being a free file pricing model (0058). Vestergaard also discloses displaying to the user whether the digital file is free or not (0108). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of pricing options as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claims 31-32**, Spagna discloses implementing the marketplace as a website on a network (C. 13, lines 21-22). Spagna fails to disclose implementing the digital marketplace as a peer-to-peer network. However, Vestergaard teaches implementing the marketplace as a website o a peer-to-peer network (0042-0043). Therefore, it would have been obvious to one of ordinary

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skill in the art at the time of applicant's invention to modify the method and system of Spagna and disclose implementing the marketplace as a website or a p2p network as taught by Vestergaard, because it allows the marketplace use the resources of the peers to distribute the content being sold.

4. Claims **8-9 and 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard and Likourezos as applied to claims 1 and 12 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claims 8-9 and 19-20**, Spagna fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. Spagna does disclose sorting options which allow a user to sort by artist, category, label, other (C. 94, line 2). Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson, because it allows for quick search through large collections of files (C. 10, lines 64-65).

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5. Claims **28-29** and **38-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard, Likourezos and Eglen as applied to claims 23 and 33 above, and further in view of Ferguson.

As per **Claims 28-29 and 38-39**, Spagna fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. Spagna does disclose sorting options which allow a user to sort by artist, category, label, other (C. 94, line 2). Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson, because it allows for quick search through large collections of files (C. 10, lines 64-65).

As per **Claim 40**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a donation and an infomercial download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention

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to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

(10) Response to Argument

First Issue

Appellant argues that none of the cited references, either alone or in combination, disclose the feature of, “if a second user downloads a file from a third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on the third party website.”

However, Examiner would like to note that when taken together the cited references do teach or suggest every limitation of the Appellant's invention. The Examiner dissects independent claim 1 below with the relevant citation and explanation. For instance, claim 1 recites:

A method for providing an online digital marketplace, the digital market place having a plurality of digital files for access by consumers over a network, the method comprising the steps of [Spagna discloses a system for the secure delivery and rights management of digital assets

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over global communications networks such as the Internet and the World Wide Web (C. 1, lines 52-58)]:

- allowing a content owner to post a file on the marketplace for access by users by
[*Spagna discloses content provider(s) or content proprietor(s) are owners of original content and/or distributors authorized to package independent content for further distribution. Content provider(s) may exploit their rights directly or license content to the Electronic Digital Content Store (C. 12, lines 24-33)*],
 - providing information about the file [*Spagna discloses the content provider(s) determines those products it wishes to sell and deliver electronically...Enough information is entered to uniquely identify the product (C. 53, lines 41-50)*];
 - setting a retail price that users will be charged for downloading the file
[*Spagna discloses the data in Usage Conditions can include the wholesale price (C. 12, lines 52-56); Spagna also discloses for a purchase transaction the price of the purchase/rental transaction under this usage condition (C. 62, lines 35-49); Moreover, Spagna discloses the clearinghouse transaction log can be used by the content provider(s) to determine what content of his has been sold and enables him to create a bill to each Electronic Digital Content Store(s) for royalties owed him (C. 79, lines 60-64)*]; and
- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website [*Spagna discloses Electronic Digital Content Store(s) {First User} use tools provided by the Secure Digital Content Electronic Distribution System to assist with: ..., secondary usage conditions. The secondary usage*

- conditions data can include retail business offers such as Content purchase price ...*
- (C. 13, lines 13-37); Spagna further discloses information can then be used to update HTML Web pages and/or add information to a searchable database maintained by the service (C. 71, lines 22-44); Further, Spagna discloses since the content promotions site is a standard web site, a web browser is used to navigate this site. The navigation features carries based on the site design of the Content Provider(s). Some sites may provide extensive search capabilities with many screens of promotional information. Others may have a simple browser interface with lists of titles, performers or new release to select from (C. 76, lines 34-38)];*
- allowing a second user to search for files posted on the digital marketplace for one to download [*Spagna discloses content provider(s) or content proprietor(s) are owners of original content and/or distributors authorized to package independent content for further distribution. Content provider(s) may exploit their rights directly or license content to the electronic digital content store(s), or Intermediate Market Partners, usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33); Spagna further discloses the content hosting site can reside at the **content provider(s)** or in multiple locations, including electronic digital content store(s) and intermediate market partners facilities (C. 13, lines 1-12) Therefore, content providers also have their own content hosting sites that they distribute digital content to users and electronic digital content stores through.*];
 - if the second user selects a particular file to download, charging the user the retail price set for the file [*Spagna discloses the electronic digital content store(s) provides*

support for all product searches, previews, selections, and purchases. Each electronic digital content store(s) establishes customer (Second User) loyalty with its customers and continues offer its own incentives and market its products as it does today (C. 75, lines 34-37); Spagna discloses for a purchase transaction the price of the purchase/rental transaction under this usage condition (C. 62, lines 58-59).

Spagna fails to *explicitly* disclose, “setting a reseller commission”. Spagna discloses purchase price and wholesale price (C. 12, line 55, C. 62, lines 48-49). However, Vestergaard teaches four parties can be involved in the distribution of digital content, the consumer, the content owner, MPE servers and the distribution server. It is possible of course, for a single part to perform the functions of more than one of these entities... (0088). Vestergaard also teaches the content owner interacts with the MPE servers and the distribution server to encrypted content into an MPE file and to make listings of it available on the distribution server. In the second phase, the consumer interacts with the MPE servers and the distribution server to identify and download the desired content, to preview it, then to decrypt it if he so desired (0090).

Vestergaard teaches various cost models to use in his system. Vestergaard teaches content owner must determine which model to use while in this entry...the MPE distributor filed allows any previously entered distributor to be selected from a pull down menu, or for a new distributor and the entry of all their details to be created. Compensation can be in terms of a percentage of gross revenues, or based on a flat rate. In the preferred embodiment, the distributor percentage is

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set to default at 25% of gross receipts (0151-0152). Therefore, Vestergaard teaches allowing a content owner to set a reseller commission for a file.

Spagna failed to *explicitly* disclose if the second user downloads the particular file from the third party website, *paying the first user the reseller commission set for the file*. However, Spagna discloses the content provider licensing content to the electronic digital content store(s), usually in return for content usage payments....The metadata assimilation and entry tool is also used to enter the usage conditions for the content. The data in usage condition can include the wholesale price, and any business rules deemed necessary (C. 12, lines 24-55). Spagna also disclose when an end-user (Second User) finds content that they want to buy, they click on a content icon, such as a music icon, and the item is added to his/her shopping cart which is maintained by the electronic digital content store(s). When the end-user complete shopping they submit the purchase request to the electronic digital content store for processing (C. 21, lines 38-57). Thus, Spagna discloses a second user downloading a particular file form the third party website. As stated above, Vestergaard teaches compensating a third party for selling a content providers digital Content. For instance, Vestergaard teaches content owner must determine which model to use while in this entry...the MPE distributor filed allows any previously entered distributor to be selected from a pull down menu, or for a new distributor and the entry of all their details to be created. Compensation can be in terms of a percentage of gross revenues, or based on a flat rate. In the preferred embodiment, the distributor percentage is set to default at 25% of gross receipts (0151-0152). Therefore, Vestergaard teaches *paying the first user the reseller commission set for the file*.

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Spagna fails to *explicitly* disclose paying the content owner a payment *based on the retail price minus the reseller commission*. Spagna does disclose the content provider licensing content to the electronic digital content store(s), usually in return for content usage payments....The metadata assimilation and entry tool is also used to enter the usage conditions for the content. The data in usage condition can include the wholesale price, and any business rules deemed necessary (C. 12, lines 24-55). Therefore, Spagna disclose paying a content owner a payment for the digital content. Further, Vestergaard teaches Compensation can be in terms of a percentage of gross revenues, or based on a flat rate (0152). Therefore, Vestergaard teaches where the commission to the third party seller is a percentage of the content's gross receipts, e.g. 25% of gross receipts. Furthermore, Likourezos teaches the payment web site management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction web site and the transaction fee is paid to the operator or owner of the payment web site (0010). Thus, Likourezos teaches paying a user for their content, while also paying a commission to another user for performing the actions of selling their content. It has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all the cited references are concerned with selling content (whether digital or physical) online and compensating the parties involved.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the cited prior art are all concerned with selling content on an electronic marketplace.

Furthermore, the USPTO interprets claim limitations that contain statement(s) such as “*if, may, might, can, could, when, potentially, possibly*”, as optional language (this list of examples is not intended to be exhaustive). As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted (*In re Johnston*, 77 USPQ2d 1788 (Fed. Cir. 2006)). They will be given less patentable weight, because language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

Second Issue

Appellant argues that none of the cited references disclose setting a negative retail price where a content owner pays a consumer to download a file. However, Examiner notes that the actual recitation of claim 4 reads, "allowing the content owner to set the retail price and the reseller commission both positively and negatively." Moreover, Vestergaard does disclose with the "Sponsored" model, the cost of the MPE file is covered by a Sponsor so the Consumer can access it at no cost (0112). Therefore, Vestergaard discloses paying a consumer to download a file. Further, Vestergaard discloses compensation can be in terms of a percentage of gross

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revenues, or based on a flat rate (0152). Therefore, Vestergaard teaches varying the retail price and the reseller commission.

Third Issue

Appellant argues that the cited prior art fails to teach the step of including various sorting options. However, Examiner notes that Spagna discloses sorting options which allow a user to sort using various sorting options (C. 94, line 2). Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc. (C. 10, line 62 – C. 11, line 8). Thus, the cited prior art teaches including sorting options to match the files by particular file attributes.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Fady S Jabr/
Examiner, Art Unit 3628

/John W Hayes/
Supervisory Patent Examiner,
Art Unit 3628

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